

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING
JANUARY 12, 2005**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, January 12, 2005, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Darryl Judson
Paul Schultz
Walter Tarmann
Ray Dywer

BOARD MEMBERS ABSENT: Robert Bartholomew
Walter Schmidt

SECRETARY TO THE BOARD: Peggy S. Pelikan

OTHERS PRESENT: Mark Nowaczyk, BA04:096, petitioner
John & Rikki Cherba, BA04:097, petitioners
Dave Kalusche, BA04:079, petitioner
Frederick & Mary Schnell, BA04:097, neighbors
Scott & Lisa Droegkamp, BA04:094, petitioners
Margit Sydow, BA04:099, petitioner
Janice Bartel, BA04:099, builder
Charlotte & Ralph Gladbach, BA04:098, petitioners
Jane Bruner, BA04:099, neighbor
Todd E. Snyder, BA04:099, builder
Herb Marquardt, BA04:094, neighbor
Mathew Fahr, BA04:095, petitioner
Nate ?, BA04:095, associate of petitioner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Tarmann *I make a motion to approve the Summary of the Meeting of December 8, 2004.*

The motion was seconded by Mr. Ward and carried with three yes votes. Mr. Schultz and Mr. Judson abstained because they were not in attendance at the December 8, 2004, meeting.

NEW BUSINESS:

BA04:079 DAVID KALUSCHE (Petitioner)/TROY ALEXANDER (Owner)

(Held in abeyance from November 10, 2004 and December 8, 2004)

Mr. Dwyer

I make a motion to approve the request in accordance with the staff's recommendation, subject to the conditions set forth in the Staff Report and for the reasons set forth in the Staff Report.

The motion was seconded by Mr. Judson and carried unanimously.

The staff's recommendation was for **approval** of variances from the road setback and conservancy setback requirements of the Ordinance, with the following conditions:

1. Both the proposed residence and outbuilding must be located at least 20 ft. from the private road and 20 ft. from the wetland, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the buildings must be located the additional distance from the private road and wetland as the overhangs exceed two (2) ft. in width.
2. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
3. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed residence and outbuilding in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. In order to ensure the construction of a new residence and outbuilding does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No.3.
5. Documentation shall be submitted to the Planning and Zoning Division staff that the Wisconsin Department of Natural Resources has approved the wetland delineation on the property prior to the issuance of a zoning permit for the new residence and outbuilding.

6. A Declaration of Restrictions shall be prepared by the Planning and Zoning Division staff, stating conservancy/wetland restrictions. Prior to the issuance of a zoning permit, the Declaration of Restrictions must be signed by the owner, notarized, and recorded in the Waukesha County Register of Deed's office, and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions will allow the petitioner reasonable use of the property while minimizing the impact on the wetland. Although the proposed residence, as conditioned, would be located 20 ft. from the private road 33 ft. right-of-way, whereas 30 ft. is the minimum required, there is an existing tree line between the location of the proposed residence and the roadway creating a vegetative buffer. A hardship exists with regards to the wetland setback in that it would be impossible for a residence to be located 75 ft. from the wetland as is required and maintain the minimum floor area requirements. Therefore, the approval of this request, as conditioned, will be within the purpose and intent of the Ordinance.

BA04:094 PAUL SCHULTZ – Petitioner
SCOTT DROEGKAMP – Owner

It should be noted that Mr. Schultz excused himself from the Board of Adjustment meeting prior to the deliberation in this case because he was serving as the petitioner. He was not in the boardroom during the deliberation portion of the meeting.

Mr. Dwyer

I make a motion to approve the request in accordance with the staff's recommendation, for the reasons set forth in the Staff Report and subject to the conditions set forth in the Staff Report with the following change:

Conditions #2 shall read as follows, "The proposed residence must be a minimum of 75 ft. from the shoreline of Lac LaBelle and the residence must be a minimum of 20 ft. from the wetland."

The motion was seconded by Mr. Judson and carried with four yes votes. Mr. Schultz was not present for the vote.

The staff's recommendation was for **denial** of the request for a variance from the shore setback requirements and **approval** of the request for variances from the floodplain and conservancy setback requirements of the ordinance, with the following conditions:

1. All existing structures on the property must be removed prior to the construction of the new single-family residence and boathouse.
2. The proposed residence must be a minimum of 75 ft. from the shoreline of Lac La Belle and both the residence and the boathouse must be a minimum of 25 ft. from the wetland.

3. The Wetland Delineation must be approved by the Wisconsin Department of Natural Resources and documentation of such approval must be submitted to the Planning and Zoning Division staff prior to the issuance of a zoning permit.
4. A Declaration of Restrictions shall be prepared by the Planning and Zoning Division staff, stating conservancy/wetland restrictions. Prior to the issuance of a zoning permit, the Declaration of Restrictions must be signed by the owner, notarized, and recorded in the Waukesha County Register of Deed's office and a copy furnished to the Planning and Zoning Division staff.
5. The first floor of the structure shall be placed two feet above the floodplain elevation (853.6 ft. above mean sea level). The fill shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation, at least fifteen (15) feet beyond the limits of the structure. Where such distance cannot be achieved because of lot lines or other similar constraints, said fill elevation shall extend as far as is practical, resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties.
6. The proposed residence may not have a full basement.
7. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the residence, and boathouse and any appurtenances in compliance with the aforementioned conditions, shall be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
8. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
9. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan and the impact of any grading on stormwater and drainage.
10. Upon completion of the foundation of the residence and attached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions. A copy of that certification must be submitted to the Town of Oconomowoc Building Inspector and the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will permit the construction of a new residence and boathouse and allow reasonable use of the property. The location of the 100-year floodplain and the wetland are significant limitations on the property; however, the proposed residence, as conditioned, would be elevated out of the floodplain, and would be 75 ft. from the shore and 25 ft. setback from the wetland. This will minimize the impact on the lake, wetland and floodplain. Therefore, the approval of this request as recommended, is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

BA04:095 MATHEW FAHR - Petitioner
JEFFREY HEEREN - Owner

Mr. Tarmann

I make a motion to deny the request in accordance with the staff's recommendation, for the reasons set forth in the Staff Report.

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for **denial** of the request for a variance from the road setback requirements of the Ordinance for the following reasons:

It has not been demonstrated, as required for a variance, that denial of the requested variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Although the location of the 24 ft. wide ingress and egress easement and the location of the mound system are limiting factors on the property, the petitioner would be allowed a 17 ft. by 60 ft. tent without the need for a variance as was previously approved. Therefore, the approval of the request for a variance from the road setback requirements of the Ordinance would not be in conformance with the purpose and intent of the Ordinance.

BA04:096 MARK AND JEAN NOWACZYK

Mr. Judson

I make a motion to deny the request for a variance from the offset requirements and approval of the request for variances from the floor area ratio, and open space requirements as well as approval of a special exception from the accessory building floor area ratio requirements of the Ordinance in accordance with the staff's recommendation, subject to the conditions set forth in the Staff Report and for the reasons set forth in the Staff Report with the following change:

Condition # 2 shall read as follows, "The proposed boathouse must be located at least 10 ft. from the side lot lines, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width then the

building must be located the additional distance from the side lot lines as the overhangs exceed two (2) ft. in width. Alternatively, the boathouse may be reduced in size to 200 sq. ft. and may then remain 5.7 ft. from the property line. The boathouse must be relocated or reduced in size as stated above by July 1, 2005.

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for **denial** of the request for a variance from the offset requirements, and **approval** of the request for variances from the floor area ratio and open space requirements as well as a special exception from the accessory building floor area ratio requirements, with the following conditions:

1. A "Preliminary Site Evaluation" of the proposed boathouse and the septic system must be conducted by the Environmental Health Division. Prior to the issuance of a zoning permit, evidence must be submitted to the Planning and Zoning Division staff that the Environmental Health Division has no objection to the proposed boathouse, and that it meets all required minimum separation distances and would not have an adverse effect on the operation of the private waste disposal system. If that cannot be done, a sanitary permit for a new waste disposal system must be issued, and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a zoning permit.
2. The proposed boathouse must be located at least 10 ft. from the side lot lines, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines as the overhangs exceed two (2) ft. in width.
3. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the relocated boathouse in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. The shed that is located partially within the road right-of-way of the property must be removed prior to the issuance of a zoning permit for the boathouse.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variance from the offset requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Although the size of the lot may be a limiting factor, the hardship in this case has been self-created. The petitioner was notified prior to constructing the boathouse that he must apply for the necessary permits and/or variances prior to constructing any structures on the subject property. Therefore, the approval of the request for a variance from the offset requirements would not be in conformance with the purpose and intent of the Ordinance. The property does not contain a garage and therefore it is reasonable to grant variances from the floor area ratio and open space requirements, as well as a

special exception from the accessory building floor area ratio requirements to allow them after-the-fact approval of a boathouse on the property for storage. The approval of this request with the aforementioned conditions, allows the petitioner after-the-fact approval of the existing boathouse while eliminating the very non-conforming shed. It is recommended that the Board of Adjustment establish a deadline by which the boathouse must be relocated to a conforming location. Finally, the approval of this request as conditioned, is within the purpose and intent of the Ordinance.

BA04:097 JOHN AND RIKKI CHERBA

Mr. Tarmann

I make a motion to approve the request in accordance with the staff's recommendation, subject to the conditions set forth in the Staff Report and for the reasons set forth in the Staff Report with the following change:

Condition # 3 shall read as follows, "The residence and decking must be a minimum of 15 ft. from the 100-year floodplain."

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for **approval** of the request for variances from the offset between a principal residence and accessory structure and floodplain/conservancy setback requirements of the Ordinance, with the following conditions:

1. The first floor including any basement of the structure shall be placed two feet above the floodplain elevation (870 ft. above mean sea level). The fill shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation, at least fifteen (15) feet beyond the limits of the structure. Where such distance cannot be achieved because of lot lines or other similar constraints, said fill elevation shall extend as far as is practical, resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties.
2. A fire wall shall be placed on the garage wall facing the residence and on the wall of the residence facing the garage.
3. The residence and decking must be a minimum of 20 ft. from the 100-year floodplain.
4. Prior to the issuance of a zoning permit, a stakeout survey showing the location of the residence and any appurtenances in compliance with the aforementioned conditions shall be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.

6. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.
7. Upon completion of the foundation of the residence and attached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions. A copy of that certification must be submitted to the Town of Summit Building Inspector and the Planning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will permit the construction of a new residence outside of the 100-year floodplain. The location of the floodplain is a limitation on the property; however, the location of the proposed residence, as conditioned, will maximize the setback from the floodplain while allowing the petitioner reasonable use of the property. It would be impossible to maintain a 75 ft. setback from the floodplain and construct a residence on the property. Finally, the approval of this request, as recommended, is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

BA04:098 RALPH AND CHARLOTTE GLADBACH

Mr. Schultz

I make a motion to deny the request in accordance with the staff's recommendation, for the reasons set forth in the Staff Report.

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for **denial** of the request for variances from the floodplain setback, floor area ratio, open space, and offset between a principal residence and an accessory building for reasons:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The petitioners have reasonable use of their property without the gazebo. Therefore, the approval of this request would not be within the purpose and intent of the Ordinance.

BA04:099 MARGIT SYDOW

Mr. Dwyer

I make a motion to approve the request in accordance with the staff's recommendation, for the reasons set forth in the Staff Report, and subject to the conditions set forth in the Staff Report with the removal of Condition #2.

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was for **approval** of the request for a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the ordinance, with the following conditions:

1. A detailed cost estimate must be submitted to the Planning and Zoning Division staff, prior to the issuance of a zoning permit for the proposed remodeling.
2. The shed must be removed from the property prior to the issuance of a zoning permit for the proposed remodeling

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will permit interior remodeling of the existing residence. The interior remodeling will eliminate an enclosed parking space; however, there is sufficient additional parking on the property. In addition, Nickels Point road dead ends a few properties to the east of the subject property and the lack of the enclosed parking space would not affect traffic flow. Finally, the approval of this request, as recommended, is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION: None

ADJOURNMENT:

Mr. Dwyer

I make a motion to adjourn this meeting at 9:35 p.m.

The motion was seconded by Mr. Tarmann and carried unanimously.

Respectfully submitted,

Peggy S. Pelikan
Secretary, Board of Adjustment